

DEFINITIVE ECONOMIC DEVELOPMENT AGREEMENT

I. Introduction and Purpose

General Electric Company (“GE”), a corporation incorporated in the State of New York, the City of Pittsfield, Massachusetts (the “City”), a municipal corporation formed in accordance with the laws of the Commonwealth of Massachusetts, and the Pittsfield Economic Development Authority (“PEDA”), an entity created pursuant to St. 1998, c. 194, §268, as amended by St. 1998, c. 486, §2, (collectively, the “Parties”) enter into this Definitive Economic Development Agreement (the “Agreement”) with the mutual interest of promoting the economic redevelopment of Pittsfield.

On October 30, 1997, the following parties entered into a mediation agreement in an attempt to “resolve certain potential claims of the Governmental Parties against GE related to the GE facility in Pittsfield, Massachusetts, the Housatonic River, and related areas of concern”¹: GE, the Massachusetts Executive Office of Environmental Affairs, the Massachusetts Attorney General, the Massachusetts Department of Environmental Protection (the “MA-DEP”), the Connecticut Attorney General, the Connecticut Department of Environmental Protection, the United States Department of the Interior, the United States Department of Justice, the National Oceanic and Atmospheric Administration, and the United States Environmental Protection Agency (the “EPA”) (collectively, the “Mediation Parties”). The City and, since its creation, PEDA also participated in the mediation as non-parties. The Mediation Parties, the City, and PEDA viewed the

¹ Mediation Agreement in the Matter of General Electric Company Pittsfield Facility/Housatonic River, dated October 30, 1997.

goals of the mediation to be “remediation of the contamination, restoration of natural resources, and the redevelopment of the industrial site,”² and contemplated a settlement, in the form of a Consent Decree to be entered by the United States District Court, that would achieve these three interrelated goals. Toward that end, they reached an agreement in principle as to the underlying terms on September 24, 1998. In furtherance of achieving the overall settlement, the Parties enter into this Agreement to address one part: the redevelopment of the industrial site. This Agreement shall not take effect unless and until the Consent Decree is finally entered as a judgment by the United States District Court. Should the Consent Decree not be approved by the United States District Court for any reason, this Agreement shall become null and void. Notwithstanding the foregoing, GE may, at its own election, implement certain of the activities set out in the Agreement prior to the effective date of this Agreement, and any activities so implemented shall, upon the effective date of this Agreement, satisfy GE's obligations under this Agreement as if this Agreement had been in effect at the time of their implementation.

The Parties believe that the activities outlined in this Agreement, along with their good faith efforts to implement the same, will rejuvenate a portion of Pittsfield by creating a pleasant work and commercial environment that will attract businesses and increase employment in Pittsfield. The Parties view such redevelopment as being mutually beneficial. Based on this common goal, the Parties agree to the following:

II. Transfer of Property/Transferee Entity

² Final Proposed Ground Rules for General Electric Company Pittsfield Facility/Housatonic River Mediation, dated November 13, 1997.

A. As specified in Attachment C and as depicted in Attachment B, and except as otherwise provided in this Agreement, GE shall, at its own expense demolish certain identified buildings currently located on those portions of the GE facility in Pittsfield to be transferred by GE to PEDDA (the "Transferred Property").

B. The Parties agree that, should the actual costs for the demolition of any structure exceed the Parties' current estimate of costs, GE shall not be entitled to offset such cost overage against the redevelopment funds it is required to provide to PEDDA under Section XI.D of this Agreement or otherwise. Likewise, the Parties agree that, if the actual costs for the demolition of any structure are less than the Parties' current estimate of costs, GE shall not be required to provide to PEDDA or any other party any such cost savings.

C. Attachment C identifies and Attachment B depicts Building 19 as a building scheduled for demolition in Phase II. If PEDDA demonstrates within three years of signing this Agreement that it has a viable tenant committed to use Building 19 for a period of at least three years, PEDDA may request that GE not demolish Building 19 and GE shall not demolish Building 19. If PEDDA exercises its option to request that Building 19 not be demolished, PEDDA may direct that GE take such actions as are necessary to prepare the building for the tenant including, without limitation, sampling, decontaminating, and refurbishing Building 19. Further, if PEDDA exercises its option to request that Building 19 not be demolished, the funds GE estimated would have been required to demolish Building 19 shall be added to the funds GE will make available for economic redevelopment on the Transferred Property as referenced in Section XI.D of this Agreement. All costs associated with preparing Building 19 for reuse, including, without limitation,

sampling, decontamination, and refurbishment, will be paid by PEDDA, either as directed by PEDDA from the funds referenced in Section XI.D or other means. GE shall bear no costs for preparation of Building 19 for reuse.

D. As specified in Attachment C and as depicted in Attachment B, and as otherwise provided in this Agreement, GE shall, at its own expense, demolish certain identified buildings located within the areas known as the 30s Complex and the 60s Complex, and refurbish the guardhouse (Building 28B), the electrical substation, and parts of the wastewater treatment system.

E. In accordance with a long-term lease agreement, of at least twenty-five (25) years, yet to be entered into by PEDDA and GE, GE shall make available to PEDDA or its tenants, at no charge to PEDDA or its tenants, a parking area of approximately four (4) acres on property owned by GE located at the northwest corner of Woodlawn Avenue and Kellogg Street, as designated in Attachment B as "GE Parking Lot."

F. After GE demolishes the buildings specified in Attachment C and depicted in Attachment B, at least 350,000 square feet of existing building foundations or appropriate sites for new foundations, comprised of at least eight (8) separate foundations (or less as agreed to by PEDDA and GE) and reasonably located and suitable for PEDDA to direct the construction of new buildings upon such foundations at a reasonable cost compared to comparable new construction in the Berkshire region. If the actual square footage of available, suitable foundations is less than 350,000 square feet, GE shall, at its own expense, pay the cost of soil management, compaction, and stability issues associated with preparing and using foundations on the Transferred Property to equal the difference between 350,000

square feet and the actual foundation area available after demolition. GE shall in good faith consult and coordinate with PEDDA regarding the number of foundations available for new construction, the location of such foundations, as well as the location and manner of consolidation of demolition and associated debris upon the Transferred Property, if any. The Parties will cooperate in good faith, to develop a mutually agreeable master plan, designating the location, size, number and other such specifications for the construction of new buildings on the Transferred Property.

G. GE shall continue to provide PEDDA with approximately three thousand (3,000) square feet of office space in Building 45 or other space reasonably equivalent to the space PEDDA is using at the time of the signing of this Agreement, for a period of five (5) years at no cost to PEDDA. It is the intent of the Parties that PEDDA's office will be moved into newly constructed or refurbished space on the Transferred Property.

H. In the event PEDDA has secured a viable tenant(s) for the Transferred Property prior to appropriate space being available for that tenant(s), GE shall lease up to 100,000 square feet of existing reasonably suitable space to PEDDA on an interim basis for that tenant(s) for a period not to exceed six years consisting of one three-year period and three one-year options to extend; provided that PEDDA notifies GE of PEDDA's intent to exercise this interim space option within 18 months of the signing of this Agreement. GE shall pass all its actual out-of-pocket costs for preparing and operating such space onto PEDDA, but shall otherwise charge no rent to PEDDA or its sublessee(s). Within 3 months of the signing of this Agreement, GE shall identify what space it intends to make available to PEDDA and shall

provide preliminary estimates of costs for preparing that space. If, sooner than the expiration of the 3 month period referenced in the preceding sentence, PEDDA identifies a viable, potential tenant for the Transferred Property, GE agrees to identify such interim space and provide preliminary estimates of costs as soon as reasonably practicable in order to assist and further PEDDA's economic redevelopment goals. PEDDA shall be entitled to sublease any space leased to it by GE pursuant to this paragraph provided that the prospective sublessee(s) agrees:

1. to abide by any environmental restrictions and easements ("EREs") to which the sub-leased property is subject;
2. to provide GE with (i) a full release and indemnity from all liability arising out of its use and occupancy of the sub-leased property, except such liability as may be proximately caused by GE's acts or failures to act subsequent to such sub-lease, and (ii) a reasonable demonstration that such sublessee(s) has the financial ability to support such protections; and
3. to provide to GE, the United States, and the Commonwealth of Massachusetts, access to the sub-leased property, in accordance with the terms set forth in Section IX of this Agreement.

I. Prior to transferring property to PEDDA, GE shall at its own expense, conduct landscaping and other improvements on or about the Transferred Property in accordance with Attachment C and the Parties' cost estimates. In addition, taking into account weather and related construction issues, no later than June 30, 2000 (unless the Consent Decree has not been approved by the United States District Court by said date; in which case, within a reasonable time thereafter), GE

shall construct athletic field(s) and associated structures, and conduct associated landscaping, in the eastern portion of the 60s Complex as indicated in Attachment C and depicted in Exhibit 1 to Attachment F. In conducting these activities, GE shall expend no less than the amounts estimated by the Parties for accomplishing such activities, and GE shall provide a regular accounting to PEDDA and the City of the costs GE has expended. Further, in conducting these activities, GE agrees to coordinate and consult with the City and PEDDA and, in GE's reasonable discretion, accommodate any suggestions made by the City and PEDDA as to how such activities should be accomplished. Following construction of the athletic field(s) and related structures in the 60s Complex, GE shall lease such property to the City in accordance with the Lease Agreement set forth in Attachment F.

J. Following completion of the work set forth in Attachment C, or as provided in Section II. C, and Section IV.A.1 of this Agreement, GE shall transfer the subject property to PEDDA. Provided that the costs to modify the sequence of property transfer originally set forth in Attachment C are not materially affected, PEDDA and GE agree to modify that sequence. PEDDA represents and warrants that it has satisfactory statutory authority to serve as the transferee entity hereunder and to discharge its obligations in connection with the Transferred Property under this Agreement, including, without limitation, the authority to:

1. obtain property through purchase or gift;
2. except as otherwise provided in this Agreement and to the extent authorized by law, indemnify prior owners for environmental, health and safety issues associated with the post-transfer ownership, use and occupancy of the Transferred Property, and property damage

and personal injury claims arising subsequent to the transfer (including, without limitation, claims based on conditions existing prior to the transfer), whether they arise from the application of regulatory, statutory or common law;

3. issue bonds or notes to raise funds;
4. remediate;
5. redevelop; and
6. lease for reuse.

K. PEDA understands and acknowledges that, at the time of transfer, portions of the Transferred Property may be subject to EREs pursuant to the Consent Decree, and that such EREs run with the land in perpetuity. PEDA shall abide by any such EREs.

L. PEDA shall not sell or otherwise transfer title to the fee interest in all or a portion of the Transferred Property within the five (5) years following the original transfer of that portion of the Transferred Property from GE. PEDA may, however, at any time after eighteen (18) months from the signing of this Agreement sell or otherwise transfer title to a building constructed after the signing of this Agreement, exclusive of the land upon which such building is situated; provided, however, that the proposed use of the building after such transfer is consistent with the use restrictions outlined in Attachment D and the prospective transferee agrees to the requirements set forth in subsections 1 through 4 of this Section L. After such five(5) year period, PEDA may, with GE's written approval, sell or transfer fee title to the Transferred Property in whole or in part. GE shall provide PEDA with such written approval, or shall inform PEDA of its decision to withhold such

approval, no later than 90 days after PEDA informs GE that it intends to transfer title. PEDA shall provide to the prospective buyer/transferee notice of any EREs to which the Transferred Property is subject. GE shall not unreasonably withhold approval for sale or transfer if the proposed use is consistent with the use restrictions outlined in Attachment D of this Agreement and the prospective buyer/transferee agrees:

1. to abide by any EREs to which the Transferred Property is subject;
2. to provide GE with (i) a full release and indemnity from all liability arising out of its ownership, use and occupancy of the portion of the Transferred Property being sold or transferred, except such liability as may be proximately caused by GE's acts or failures to act subsequent to such transfer, (ii) insurance coverage based on a pro-rated amount of the total insurance PEDA is required to obtain hereunder, adjusted for the area and/or building space being sold or transferred as compared to the total amount of property originally transferred by GE to PEDA, and (iii) a reasonable demonstration that such buyer or transferee has the financial ability to support such protections;
3. to provide to GE, the United States, and the Commonwealth of Massachusetts, access to the property being sold or transferred, in accordance with the terms set forth in Section IX of this Agreement; and
4. that the requirements set forth in this Paragraph II.M shall also be binding on subsequent buyers and transferees of a fee interest in any

Transferred Property and shall be incorporated into subsequent sale or transfer documents as a condition of any such sale or transfer; provided, however, that GE's approval shall not be required for any sale or transfer after fifteen (15) years from the date of original transfer to PEDDA.

M. Immediately upon transfer of the Transferred Property to PEDDA by GE, PEDDA shall be entitled to transfer a leasehold interest in all or any portion of the Transferred Property; provided that PEDDA shall notify each such tenant of the existence and provisions of this Agreement and shall provide a copy of this Agreement to each such tenant; and provided further that PEDDA shall include as a condition in any lease a requirement that the tenant agrees to the access provisions set forth in Section IX of this Agreement. The notification and other requirements of this Section II.M shall be binding on all subsequent buyers and transferees of a fee interest in all or a portion of the Transferred Property. In leasing any portion of the Transferred Property, PEDDA shall be entitled to extend options to purchase in connection with any such lease; provided that the right to exercise any such option to purchase shall not vest prior to the five (5) period discussed in Section II.L.

III. Eminent Domain

PEDDA and the City shall not utilize their respective eminent domain authorities with respect to the GE Property for a period of seven (7) years following the execution date of this Agreement. After seven (7) years from the date of this Agreement, either the City or PEDDA may invoke its eminent domain authority to take property that GE is not actively using for its own purposes (whether directly or through any wholly-owned subsidiary or other such entity); provided, however, that

if GE can reasonably demonstrate that such non-use is temporary due to renovation or remediation or a bona fide business purpose, neither the City nor PEDDA shall order such taking for a period of one (1) year from the date GE provides satisfactory evidence of such temporary non-use. In any event, a taking by the City or PEDDA shall, to the extent allowed by law, transfer all liability for or from such property to the City or PEDDA, as the case may be, including, without limitation, all liability involving costs for environmental investigation or remediation, third-party civil actions, or any other claims of damage based on statutory or common law theories not expressly stated; except that the City or PEDDA, as the case may be, shall not assume liability for i) performing the groundwater and NAPL related activities described in Sections 2.2.5 and 2.7 of the SOW and Attachment H thereto with respect to such property, or ii) damages or other costs primarily arising out of pre-taking exposure to contamination or release of such contamination on or from the GE Property. Any decision by the City or PEDDA to exercise eminent domain rights under this Section shall not be subject to dispute resolution in accordance with Section XII of this Agreement. Except as specifically provided in this Section III, GE reserves all rights to oppose or challenge any such decision by the City or PEDDA to exercise their eminent domain rights.

IV. Responsibilities/Indemnifications/Releases; Arbitration Procedure

A. GE Responsibilities

Consistent with the Consent Decree and the SOW, GE shall be responsible for the following with respect to the Transferred Property:

1. performing, prior to transfer, the response actions (other than post-removal site control, groundwater, and NAPL-related activities)

agreed upon in the Consent Decree and the SOW, as more particularly set forth in Consent Decree Sections VI (Performance of Response Actions by Settling Defendant), VII (Removal Actions Outside the River), and IX (Performance Standards), SOW Section 2.0, and all relevant work plans developed and/or implemented pursuant thereto;

2. performing, prior to transfer, the demolition, refurbishing, and redevelopment activities set forth in Attachment C and Section II of this Agreement and as otherwise agreed by the Parties;
3. performing the groundwater and NAPL-related activities described in Sections 2.2.5 and 2.7 of the SOW and Attachment H thereto;
4. off-site migration of contamination caused by GE, unless PEDA or a future user not controlled or invited on or otherwise allowed to enter the Transferred Property by GE causes the migration. If the contamination migrating off-site is of the same nature as that known as of the date of transfer, it shall be presumed to be caused by GE unless GE demonstrates that PEDA or a future user not controlled or invited on or otherwise allowed to enter the Transferred Property by GE caused such contamination;
5. for a period of fifteen (15) years, managing the soil and groundwater issues associated with excavation in existing or new utility corridors (i.e., corridors for the provision of steam, water, electricity, gas, sewer, and fiber optic or similar telecommunication systems capable of providing high speed internet, telephony, and similar services) to

the extent any such utility supports, or is reasonably necessary for, the contemplated uses of the Transferred Property, including construction of new buildings or structures as set forth herein; and

6. off-site disposal of waste or soil from the Transferred Property prior to transfer.

B. Indemnifications Running From GE to the City

Upon request by the City, GE shall indemnify the City, as well as each of its current and former officers, agents, representatives, and employees, and all persons acting by, through, under, or in concert with any of them, against any and all losses, costs, expenses, damages, or claims arising out of the past practice of the City in providing sewage sludge containing polychlorinated biphenyls ("PCBs") for use or disposal on residential property. If any such claim is made against the City, the City shall promptly notify GE of the claim and shall take no action that might compromise or impair GE's position in such a matter. GE shall have the exclusive right to control the defense, settlement, trial, or other disposition of any such claim on behalf of the City and GE. To the extent that the City has insurance, or other legal rights to indemnification or contribution from third parties, the City shall cooperate with GE to pursue the City's legal rights as against those parties and have those rights assigned to GE. Any funds obtained from such insurance or third party shall be used to defray the expenses that GE incurs indemnifying the City.

C. Indemnifications Running From GE to PEDA

Upon request by PEDA, GE shall indemnify PEDA, as well as each of its current and former officers, agents, representatives, and employees, and all persons acting by, through, under, or in concert with any of them, against any and all losses, costs, expenses, damages, or claims arising out of or relating to the responsibilities that GE has specifically agreed to retain, which are set forth in Section IV.A. of this Agreement. If any such claim is made against PEDA, PEDA shall promptly notify GE of the claim and shall take no action that might compromise or impair GE's position in such a matter. GE shall have the exclusive right to control the defense, settlement, trial, or other disposition of any such claim on behalf of PEDA and GE. To the extent that PEDA has insurance, or other legal rights to indemnification or contribution from third parties, PEDA shall cooperate with GE to pursue PEDA's legal rights as against those parties and have those rights assigned to GE. Any funds obtained from such insurance or third party shall be used to defray the expenses that GE incurs indemnifying PEDA.

D. PEDA Responsibilities and Indemnifications
Running From PEDA to GE

Subsequent to the transfer of property from GE to PEDA, PEDA shall be responsible for, and shall indemnify GE against any and all losses, costs, expenses, damages, or claims arising out of all environmental liabilities, to the extent permitted by law, relating to the Transferred Property that are not retained by GE under Section IV.A of this Agreement, including, without limitation:

1. except as provided in Section IV.A of this Agreement, and except as caused by GE's negligence or failure to use good engineering

practices in performing its obligations under the Consent Decree and SOW, additional remedial requirements on or related to the Transferred Property (including, without limitation, those necessitated by a change in law or regulations or as a result of additional work required or performed by PEDDA, subsequent owners, tenants, or any third party, or as a result of recontamination of the Transferred Property caused by natural events or otherwise);

2. tort liability associated with PEDDA's (or its successor's) ownership, use, or occupancy of the Transferred Property including, without limitation, liability from exposure to any hazardous constituents during use, ingress, or egress to the Transferred Property;
3. off-site migration of contamination to the extent such migration is caused by PEDDA or a future user not controlled or invited on or otherwise allowed to enter the Transferred Property by GE;
4. damage actually caused by the unreasonable interference with any remedy by PEDDA or a third party not controlled or invited on or otherwise allowed to enter the Transferred Property by GE;
5. except as provided in Section IV.A of this Agreement, maintenance and operation of the Transferred Property including, without limitation, maintenance of buildings, grounds, landscaping, use restrictions, any remedy, and/or proper soil management practices; and
6. unknown issues, except to the extent that GE has material information that GE was obligated but failed to submit to the EPA or the MA-DEP, or material information that GE has or could find

through conducting reasonable due diligence within GE, prior to the date of the initial transfer, and fails to inform PEDA of such information.

E. Releases Running From the City to GE

Subject to and in consideration of the mutual promises contained herein, the City grants GE a covenant not to sue or bring any further action and releases GE fully from all claims, causes of action, damage, injunctive relief, or other remedies, whether at law or in equity, that the City has or will ever have against GE with respect to or arising from the transportation, storage, use, treatment, disposal, or arrangement for disposal of PCBs or any other hazardous substance, pollutant or contaminant (as defined under federal or state law) at the Transferred Property itself. With respect to PCBs or any other hazardous substance, pollutant or contaminant (as defined under federal or state law) migrating from the Transferred Property, the City grants GE a covenant not to sue or bring any further action and releases GE fully from all claims, causes of action, damage, injunctive relief, or other remedies, whether at law or in equity, that the City has or will ever have for property not owned by the City, to the extent that GE has materially satisfied governmental orders, agreements, or settlements to address such contamination migrating from the Transferred Property. With respect to property previously or currently owned by the City at which response actions have been or are required under the Consent Decree and SOW (including, but not limited to, the property depicted in SOW Figure 2-6), the City grants GE a covenant not to sue or bring any further action and releases GE fully from all claims, causes of action, damage, injunctive relief, or other remedies, whether at law or in equity, that the City has or

ever will have against GE arising from the presence, prior to the date of signing this Agreement, of PCBs or any other hazardous substance, pollutant or contaminant (as defined under federal or state law) at such property to the extent that GE has materially satisfied or is materially satisfying governmental orders, agreements, or settlements to address such contamination; provided, however, that if the City obtains the necessary approvals to amend an ERE allowing a change of use to such property, and the City in fact implements such a change in use, then this release and covenant not to sue shall not apply to the extent that the City incurs additional costs of response to implement such change in use. Notwithstanding the foregoing, the City does not release and covenant not to sue GE to the extent that GE has material information GE was obligated but failed to submit to the EPA or MA-DEP, or material information that GE has or would find through conducting reasonable due diligence within GE prior to the date of the original transfer and not disclosed to the City or PEDDA.

F. Releases Running from GE to the City

The Parties agree that this Agreement is meant to transfer obligations from GE to PEDDA, not to the City, unless a provision within this Agreement specifically imposes obligations upon the City. It is not the intent of the Parties to impose any liability or obligation upon the City other than that expressly set forth in this Agreement. Toward that end, GE fully, completely, irrevocably, and unconditionally releases, acquits, remises, and forever discharges the City, as well as each of its current and former officers, agents, representatives, and employees (except to the extent it is necessary for GE to name any such officers, agents, representatives, employees or persons in any proceeding solely in order to state a claim upon which

relief may be granted), and all persons acting by, through, under, or in concert with any of them, from any and all claims, demands, debts, liabilities, contracts, obligations, accounts, torts, causes of actions, losses, expenses, or claims for relief of whatever kind or nature, whether known or unknown, whether suspected or unsuspected, which GE may now or in the future have with respect to, or as claimed to have had arisen from, or by reason of, or in any way connected with acts, obligations, or omissions of PEDA and its successors. However, if the City leases, occupies, or otherwise uses Transferred Property, GE reserves any claims it may have with respect to the acts or omissions of the City, its current and former officers, agents, representatives, and employees, and persons acting by, through, under, or in concert with any of them to the extent that such acts or omissions occur during the course of and relate to such lease, occupancy, or use.

G. Claims Regarding PCBs on City-Owned Property and Expedited Arbitration Process

1. The City owns or previously owned properties (including property used for landfill purposes, parks, public works, and rights of way) at which response actions have not been and will not be required under the Consent Decree and SOW that the City contends may be contaminated with PCBs. In the event that such a particular property owned or previously owned by the City is found to be contaminated with PCBs (the "Subject Property"), and the City contends that GE is wholly or partially responsible for such contamination, then the City may (unless it is prohibited by some other agreement) tender to GE the City's claim that GE is responsible for costs, expenses, or damages resulting from such contamination. Following

such notice, the City and GE shall meet and shall, for a period of no less than thirty (30) days (which period may be extended by mutual agreement of GE and the City) attempt through informal negotiations to resolve the City's claim. The foregoing provisions regarding informal negotiations shall not apply in the event that a Party seeks injunctive relief or other such pretrial equitable relief. In the event that GE and the City fail to resolve the City's claim through such informal negotiations, the City may (i) pursue all legal remedies available to it, including filing an action in a court of law or equity; or (ii) initiate an expedited arbitration process as described further below (the "Expedited Arbitration Process").

2. In the event that the City elects to initiate the Expedited Arbitration Process, it shall provide written notice to GE. The hearing portion of the Expedited Arbitration Process shall begin within forty-five (45) days of GE's receipt of the City's notice of intent to pursue the Expedited Arbitration Process unless both the City and GE agree to extend the date. It shall be the goal of the City and GE to conclude the Expedited Arbitration Process within ninety (90) days of receipt of such notice. The hearing shall be held in the City of Pittsfield, unless otherwise agreed to by the City and GE.

3. The arbitrator shall be selected and mutually agreed to by GE and the City within fifteen (15) days after GE's receipt of the City's written notice. If the City and GE are unable to agree upon selection of an arbitrator, the arbitrator shall be selected pursuant to the Rules of the American Arbitration Association ("AAA"). The arbitrator shall be selected

from among a list of persons possessing experience with and knowledge of environmental dispute resolution. GE and the City may each submit a list containing up to ten names of such qualified persons. If the arbitrator originally chosen to conduct the Expedited Arbitration Process shall become unable to serve as the arbitrator, GE and the City shall attempt to mutually agree on the selection of a new arbitrator, and, if unable to do so within ten (10) days, the arbitrator shall be selected in the manner previously described in this paragraph.

4. The Massachusetts Uniform Arbitration Act for Commercial Disputes, G.L. c. 251, shall apply and certain rules of the Commercial Arbitration Rules of the AAA as amended and effective on January 1, 1999 (the "AAA Rules") shall apply, namely R-22 through R-30, R-32 through R-39, R-41, R-43, R-44, R-47, R-48, and R-50(a) and (c). The arbitrator selected for the Expedited Arbitration Process shall perform those tasks otherwise committed to the AAA in the AAA Rules, where applicable. There shall be no rules of evidence. Where there is any conflict between the AAA Rules and this Agreement, this Agreement shall prevail. GE and the City consent to judgment upon the award rendered by the arbitrator being entered by the Berkshire County Superior Court.

5. GE and the City agree to voluntarily and in good faith exchange all non-privileged documents, information and other evidence in their possession or within their control relating directly or indirectly to PCB contamination of the Subject Property and to use their best efforts to identify and make available to the other party any individuals who have material

knowledge relating to such contamination no later than ten (10) days before the commencement of the hearing; provided, however, that upon the motion of GE or the City, the arbitrator may extend the time period based on a showing of undue burden. The arbitrator may conduct a preliminary hearing and may order any additional discovery at the request of either the City or GE.

6. Except as otherwise provided in this Paragraph, the substantive law of the United States and the Commonwealth of Massachusetts (including with regard to the award of fees and costs) shall apply to the Expedited Arbitration Process as if the Expedited Arbitration Process were a judicial proceeding under such law. The issues for the determination of the arbitrator are whether GE and/or the City should be held legally responsible for the PCB contamination of the Subject Property, and whether and how such responsibility should be apportioned between them. Notwithstanding any other provision of law, the arbitrator may enter a declaratory judgment in favor of GE and/or the City without regard to whether either GE or the City has actually incurred any response costs relative to the Subject Property.

7. GE and the City each reserve all rights to seek cost recovery, contribution, and any other remedy that may be available under federal or state law with respect to any other person.

V. Insurance

A. PEDDA shall obtain insurance for each Phase of property transferred, as detailed in Attachment C, in the aggregate amount of fifty million dollars

(\$50,000,000) with a deductible not to exceed one million dollars (\$1,000,000) for those environmental, health, or safety claims associated with the Transferred Property for which PEDDA has agreed to indemnify GE under this Agreement.B.

GE and the City shall be additional insureds to any and all policies on the Transferred Property.

C. PEDDA and all future transferees or tenants shall carry insurance beyond the environmental, health, and safety policies stated above for use of the Transferred Property in the form of a comprehensive general liability policy, including without limitation coverage for contractual liability, on an occurrence form, with limits of not less than five million dollars (\$5,000,000) per occurrence and ten million dollars (\$10,000,000) in the annual aggregate, naming GE as additional insured. The policy must be issued by insurer(s) licensed to do business in the state of Massachusetts and having a Best's rating of not less than A-, IX. In determining the appropriate pro-rated amount of insurance for a tenant, the Parties agree to use the amount of insurance referenced in this Subsection as a guide, but will determine the appropriate coverage given the area and/or building space being sold or leased and the associated risk.

D. The Parties agree to discuss adjusting the appropriate amount of coverage should it be commercially infeasible to obtain insurance of the type or amount specified in Subsections A and C of this Section V.

VI. Representations and Warranties

A. Subject to the terms stated herein, GE shall transfer property "as is."

B. GE shall represent and warrant good and transferable title to all property transferred by it to PEDDA.

C. GE shall represent that, as of the date of transfer, GE has complied with all applicable requirements of and has satisfied all applicable obligations under the Consent Decree and the SOW on all property to be transferred by it to PEDDA.

VII. Disclosures and Assessments

A. GE shall reasonably cooperate with the City and PEDDA in analyzing the conditions at the property to be transferred with respect to the existence of PCBs and other hazardous substances.

B. The City and PEDDA currently have access to all information in the public repositories.

C. GE has already or shall disclose relevant sampling results of building interiors and exteriors, soils and groundwater obtained from the property to be transferred (Attachment E).

D. At its own cost, GE shall make available to PEDDA and the City, at a reasonable time and place, for the purposes of discussing with and assisting PEDDA and the City in their understanding of the environmental conditions on the Transferred Property a representative of GE with knowledge of the conditions. In addition, at its own cost, GE will make best efforts to make its environmental consultants and current employees available to PEDDA and the City at reasonable times and places and will provide PEDDA and the City with information reasonably available to it concerning past activities on the Transferred Property, including information about existing contamination, subject to applicable privileges.

E. If PEDDA requires information beyond that provided pursuant to the preceding four (4) subsections for purposes of (i) obtaining insurance coverage or financing at commercially reasonable rates or (ii) determining the cost or feasibility

of soil excavation for redevelopment as set forth in Section II, GE and PEDDA agree to negotiate in good faith the scope of such assessment.

VIII. Phased Transfer of Property

A. GE shall conduct the response activities agreed upon in the Consent Decree and the SOW (other than post-removal site control activities and groundwater and NAPL-related activities described in Sections 2.2.5 and 2.7 of the SOW and Attachment H thereto with respect to such property) prior to the transfer of particular property to PEDDA.

B. GE shall demolish the buildings as agreed and indicated in Attachment C and depicted in Attachment B, except as otherwise provided in Section II.C of this Agreement.

C. GE shall refurbish the buildings as agreed and indicated in Attachment C and depicted in Attachment B.

D. GE shall perform such other tasks as agreed by the Parties as provided in Section XI. D.

E. The Parties agree to work to develop a mutually agreeable and beneficial schedule to conduct agreed activities and transfer property. As necessary, the Parties agree to discuss and agree to modifications to the schedule; provided, however, that changes to the sequence of property transfer shall be governed by Section II.J of this Agreement. Modifications to the schedule shall not be unreasonably rejected if they do not cause an acceleration of expenditures or adversely affect the integrity of the redevelopment design. Such schedule shall not require GE to transfer any property if (i) PEDDA lacks the financial ability to support the protections provided to GE (including, without limitation, the obligations of

PEDA contained in Section III of this Agreement), or (ii) property previously transferred to PEDA is not being utilized for any economic purposes and there are no contracts for such uses or such property is not otherwise capable of sustaining itself financially or no new structures have been constructed or are under construction; provided, however, that if PEDA cannot satisfy the requirements of clause (ii), PEDA may propose that the activities and transfer proposed in Phase II (Attachment C) proceed and GE shall consent provided that PEDA demonstrates (1) executed, binding, and non-contingent contracts for the use of enough of a portion of the Phase II property for an amount and duration that is reasonably expected to result in the Phase II property being capable of sustaining itself financially, and (2) commitment and financial resources sufficient, in GE's reasonable opinion, to maintain the protections in clause (i). If PEDA is unable to demonstrate that any such contract(s) is (are) non-contingent, GE shall place title for the Phase II property into escrow for a reasonable period and shall release the title for the property from escrow when all contingencies are met. If the Parties disagree about this provision, the Parties agree to submit the dispute to expedited binding arbitration subject to appeal only on the grounds of bias or prejudice.

F. Beyond the activities identified as Phases I and II in Attachment C, the Parties agree to evaluate in good faith available property on the GE facility in Pittsfield for future transfer to PEDA. If PEDA identifies any such property that it desires to acquire from GE, PEDA shall: (i) demonstrate to GE that it is reasonably utilizing property already transferred to it for economic purposes; (ii) provide GE with a full release and indemnity from all liability arising out of ownership, use and occupancy of the additional property to be transferred, except such liability as may

be proximately caused by GE's acts or failures to act subsequent to transfer; (iii) obtain appropriate insurance coverage on the property; and (iv) provide GE with a reasonable demonstration that it has the financial ability to support such protections and any EREs to which the property may be subject. If PEDDA satisfies the requirements of the preceding sentence, GE agrees to give serious consideration, but shall not be obligated, to transfer such property to PEDDA. GE's determination not to transfer such property to PEDDA shall not be subject to dispute resolution.

IX. Access and Land/Water Use Restrictions

A. PEDDA shall provide to GE and GE's contractors and representatives reasonable access to the Transferred Property as needed to address issues associated with the Transferred Property or the property that GE retains, including, without limitation, maintaining or conducting investigative or response activities. In exercising its access rights under this Agreement, GE shall endeavor not to interfere with the quiet enjoyment of the Transferred Property, to the extent consistent with GE's obligations under the Consent Decree and the SOW.

B. PEDDA shall provide to the United States and the Commonwealth of Massachusetts and their contractors and representatives access to the Transferred Property to the same extent GE would be required under the Consent Decree (including the 1 ½ Mile Reach Access and Services Agreement, which is appended to the Consent Decree) to provide such access had the property not been transferred to PEDDA.

C. Attachment G is a list of property owned by the City within the Site, as that term is defined in the Consent Decree, upon which EREs may be necessary.

Within 30 days after receipt of the pre-design summary report (as described in the SOW) for the response action in question, the City shall cause, at its own expense, EREs to be placed on such property as required by the Consent Decree. The City and PEDAs rights on the property (i) listed in Attachment G; (ii) on the Transferred Property; and (iii) on any GE-owned property within the Site shall be subordinate to any ERE.

X. Limited Option to Repossess

GE shall have the option to repossess Transferred Property if PEDAs is unable to meet its financial obligations or if the Transferred Property is used in a manner inconsistent with applicable EREs or the use restrictions identified in Attachment D. Prior to exercising such option, GE shall be required to give PEDAs written notice and an opportunity to cure and, if PEDAs proceeds to duly take steps to cure such condition, GE may not seek to repossess the Transferred Property unless the financial failure persists for at least a period of six (6) months or the use inconsistency is not cured within a reasonable time. Any decision by GE to exercise its right to repossess under this Section shall be subject to dispute resolution in accordance with Section XII of this Agreement.

XI. Payments to Support Redevelopment

A. The Parties recognize that the City will suffer a loss in tax revenue from the Transferred Property and that the City is also interested in further economic redevelopment. Toward that end, GE agrees to make a gift to the City in the amount of one million dollars (\$1,000,000) for each of ten (10) years following the effective date of this Agreement. The first such payment shall be made within thirty (30) days following the effective date of this Agreement.

B. GE has made a gift to the City in the amount of one hundred thousand dollars (\$100,000) for use by the City to commission an economic reuse analysis.

C. GE has made a gift to PEDDA in the amount of seventy thousand dollars (\$70,000) to support PEDDA operating expenses.

D. GE shall make funds in the amount of fifteen million three hundred thousand dollars (\$15,300,000.00) available to PEDDA for economic redevelopment on the Transferred Property consistent with this Agreement. PEDDA may either direct GE to conduct redevelopment projects consistent with this Agreement on the Transferred Property or direct GE to make timely payments directly or to third parties (including the City and/or the Commonwealth of Massachusetts) for redevelopment projects consistent with this Agreement associated with the Transferred Property including, without limitation, new building construction, landscaping, economic incentives to tenants, or insurance. Further, payments for roadway and infrastructure projects and/or PEDDA administrative and support expenses, including outside technical, financial, legal, marketing, and other such advisors, will be allowable; provided that such projects and expenses are for the purpose of supporting economic development on the Transferred Property. GE shall provide a financial statement of disbursements of the \$15,300,000.00 to PEDDA on a quarterly basis.

XII. Dispute Resolution

A. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under this Agreement between the Parties. The Parties

agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement.

B. Any dispute that arises under or with respect to this Agreement that cannot be resolved in the daily management and implementation of this Agreement shall in the first instance be the subject of informal negotiations between the Director of PEDDA and/or the Mayor of the City and/or GE's Vice President of Environmental Programs, as the case may be, who shall use their respective best efforts to resolve such dispute. The period for informal negotiations shall not exceed thirty (30) days from the time the dispute arises, unless it is modified by written agreement of the Parties involved in the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written notice of dispute.

C. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding paragraph of this Section, the Parties involved in the dispute agree to submit the dispute to mediation. Within 14 days following the expiration of the time period for informal negotiations, the Parties involved in the dispute shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request the American Arbitration Association to appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties involved in the dispute. The decision to continue mediation shall be in the sole discretion of each party involved in the dispute. The Parties will bear their own costs of the mediation, except that GE shall pay for the time and expenses of

the mediator. The Parties agree that all mediated discussions shall remain confidential.

D. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, venue for judicial enforcement shall be Berkshire County Superior Court or the Federal District Court for the District of Massachusetts, Western Division. Notwithstanding the foregoing, injunctive relief may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

E. The Parties shall have the right to enforce this Agreement against each other pursuant to Section XII of this Agreement, notwithstanding any contribution protection, releases, or covenants arising out of the Consent Decree or any Prospective Purchaser Agreement or similar agreement that might otherwise limit the Parties' ability to enforce this Agreement.

XIII. Non-Assignability of Agreement

Except as provided in Sections II..L or M of this Agreement, neither the City nor PEDDA shall assign or otherwise transfer their rights or obligations under this Agreement, including but not limited to their rights to enforce the provisions of this Agreement, without the express written consent of GE.

GENERAL ELECTRIC COMPANY

CITY OF PITTSFIELD

By: _____
Its _____,
duly authorized

By: _____
Mayor Gerald S. Doyle, Jr.,
duly authorized

Date: _____

Date: _____

PITTSFIELD ECONOMIC
DEVELOPMENT AUTHORITY

By: _____
Thomas E. Hickey, Jr.
Its Interim Director,
duly authorized

Date: _____

List of Attachments

- A. Definitions
- B. Phase I and II Site Plan
- C. Phase I and II Redevelopment Activities
- D. Use Restrictions
- E. List of Environmental Reports
- F. Lease Agreement
- G. List of City-Owned Property Within Site for Which EREs May Be Necessary